

EXHIBIT B

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

EMILY NOE, et al.,)
Plaintiff,)
vs.)
MICHAEL L. PARSON, et al.,) No. 2024 MR 3
Defendants,) 2024 MR 415
vs.)
WORLD PROFESSIONAL ASSOCIATION)
FOR TRANSGENDER HEALTH,)
Third-Party Subpoena)
Recipient.)

REPORT OF PROCEEDINGS of the electronic
recording of the hearing of the above-entitled
cause before the Honorable JUDGE JOSEPH M. GRADY,
at the Kane County Courthouse, Room 110, on the
24th day of September, 2024.

Motion to Quash Subpoena

RECORDING TRANSCRIBED BY:

Jennifer Campbell

Official Court Reporter

APPEARANCES:

CROWELL & MORING LLP, by

ATTORNEY DERICK DAILEY
ATTORNEY JUSTIN KINGSOLVER
Two Manhattan West
375 Ninth Avenue
New York, New York 10001
(212) 803-4016
on behalf of WPATH,

DREW LAW GROUP, by

ATTORNEY BRYAN A. DREW
806 Public Square
Benton, Illinois 62812
(618) 219-8833
on behalf of the State of Missouri.

* * *

1 THE COURT: This is case 2024 MR 3.

2 Hi.

3 ATTORNEY DAILEY: Good morning.

4 ATTORNEY DREW: Good Morning, Your Honor.

5 THE COURT: Hi.

6 Whose motion is it?

7 ATTORNEY DAILEY: It's our motion.

8 THE COURT: Okay.

9 ATTORNEY DAILEY: Derick Dailey on behalf
10 of WPATH, joined with co-counsel, Justin Kingsolver.

11 THE COURT: Okay.

12 ATTORNEY DAILEY: As you know, Your Honor,
13 we submitted briefing in this matter. And what's in
14 front of you is a motion to quash the foreign
15 subpoena. It's an out-of-state subpoena from the
16 State of Missouri.

17 And we've argued in the motion that the
18 subpoena should be quashed for three main reasons.

19 The first is that it doesn't comply
20 with Rule 17 of the Illinois State Supreme Court
21 Rules.

22 THE COURT: Okay.

23 ATTORNEY DAILEY: And that's a rule that
24 requires that if you are seeking documents related

1 to lawful health care activity, that one of two
2 exemptions apply.

3 The State concedes in its subpoena that
4 they are seeking documents for lawful health care
5 activity, but they don't identify any of the
6 exemptions.

7 THE COURT: Okay.

8 ATTORNEY DAILEY: For that reason alone, we
9 think that the motion should be granted.

10 THE COURT: Okay.

11 ATTORNEY DAILEY: In addition to Rule 17,
12 Illinois has a Shield Law, it was enacted last year,
13 2023, which essentially prohibits out-of-state
14 enforcers to seek lawful health care activity
15 documents and information from Illinois providers'
16 gender-affirming care.

17 That law, which was passed last year,
18 makes it very clear that outside enforcers like
19 Missouri Attorney General's Office cannot come in to
20 Illinois and collect that information from
21 providers.

22 Our client is a provider of
23 gender-affirming care. They work with medical
24 professionals across the country to set standards

1 for gender-affirming care.

2 And pursuant to the plain language of
3 the Shield Law, this subpoena would clearly fall
4 within the Shield Law and be prohibited.

5 We also lay out a number of
6 constitutional arguments in our motion.

7 Most importantly, the First Amendment.
8 We argue that the documents that State requests,
9 which are 47 broad categories of documents
10 requesting sensitive information, confidential
11 information about our client, what our client does,
12 voting records of members, of personnel matters, we
13 argue that seeking those records and disclosure of
14 those records would infringe on our client's First
15 Amendment Speech and Association Rights, which
16 essentially, is activity for our client.

17 We lay out a number of case law, cases,
18 rules, many of which the State does not respond to
19 in its motion. And we make the point in our reply
20 that they've essentially waived and conceded those
21 arguments.

22 Last thing I'll say, Your Honor, is
23 that we also make arguments with respect to
24 relevance and breadth, which, again, went

1 unresponded in the motion.

2 For those reasons, we'd ask that the
3 motion be quashed.

4 THE COURT: Okay. Thank you.

5 Where was it issued -- from Missouri?

6 ATTORNEY DAILEY: Yes. From Missouri and
7 issued here in Illinois.

8 THE COURT: Okay. Thanks.

9 ATTORNEY DREW: Bryan Drew on behalf of
10 Parson, Your Honor, in this instance, the State of
11 Missouri.

12 Judge, as it relates to this, I'll kind
13 of go in reverse order of what I planned.

14 But as it relates to the issue of
15 breadth and scope, these very documents have been
16 disclosed in five different states in different
17 litigations in other places. And so, from WPATH'
18 standpoint, clearly, it's not overburdensome to
19 them. And we cite that in our brief. He prefers
20 that we waive that, but, actually, in our reply to
21 their motion to quash, we specifically set forth
22 that out.

23 In fact, we even cite the states upon
24 which WPATH have disclosed these very documents.

1 In addition to that, we note in our
2 reply that we are willing to allow for redaction,
3 which I think any First Amendment claim that they
4 have, redaction has always been a way for the case
5 law to say that that will suffice in that instance.
6 So that relates to those. I don't think those are
7 really germane to the issue.

8 What it really gets down to is whether
9 or not our request actually even falls under the
10 Shield Law under the circumstances.

11 Because if we look at the actual Shield
12 Law the State of Illinois enacted, basically, the
13 federal rule of outgoing subpoenas, in which they
14 went back last year and stuck in a special section,
15 special legislation under the circumstances of
16 un-enforceable foreign subpoenas, and in that they
17 refer to Lawful Health Care Activity Act and that
18 Reproductive Health Act and is cited there, and I've
19 cited it in our reply.

20 But, in this instance, we are not
21 seeking medical records from an individual who
22 sought health care or sought gender-affirming
23 treatment here in Illinois.

24 WPATH sets out standards that they have

1 promulgated throughout the United States and said
2 this is the standard upon which you are to treat
3 transgender issues, this is the way we should do it.

4 And the underlying lawsuit, which
5 I think is very relevant, in Missouri is actually
6 Noe and several other plaintiffs who have sued the
7 State of Missouri concerning a statute there in
8 Missouri. And they have brought the issue forward,
9 and they cite WPATH's standards as their grounds for
10 overturning the statute that exists in the state of
11 Missouri, which I actually set forth in full the
12 entire statute, the Missouri statute is set forth in
13 my reply, which I won't do here. I'll leave that to
14 the Court to look at another time.

15 But in that, they brought the issue up.
16 And, specifically, in the underlying Unenforceable
17 Foreign Subpoenas Act in Illinois under the Code of
18 Civil Procedure it clearly sets out that one of the
19 exceptions is actually if someone is seeking on
20 statutory grounds constitutionality as it relates to
21 an issue. And in this instance, Noe, and in the
22 other ones, I'd also note not a single person here
23 is a resident of Illinois. So they're all --

24 THE COURT: You mean among the parties?

1 ATTORNEY DREW: Among the parties.

2 They're all from foreign states.

3 So Illinois is seeking to protect --
4 conceivably, under this rule, to protect Illinois
5 residents from outside entities, particularly,
6 states, from coming in and seeking information
7 against Illinois residents or people who come over
8 to seek that treatment. No one here has gone and
9 done that. So I don't think it falls within that.

10 But, in addition to that -- so I think
11 it should be denied for those reasons.

12 But, in addition, and as it relates to
13 this, I think the --

14 THE COURT: You mean the motion should be
15 denied?

16 ATTORNEY DREW: Yes.

17 THE COURT: Okay.

18 ATTORNEY DREW: The motion to quash should
19 be denied. I apologize.

20 THE COURT: Okay.

21 ATTORNEY DREW: And -- but as it relates to
22 that, I think, also, what needs to be dealt with,
23 also, is the underlying act itself. Because it is
24 set out simply for one single, solitary purpose, and

1 that unusual purpose is to deal with one specific
2 area of medicine.

3 And in this instance, what's happened
4 is the State of Illinois has done something that
5 I don't think states are allowed to do, and that is
6 to say, well, here's a topic and issue that is of
7 public concern, transgender treatment,
8 gender-dysphoria, surgical intervention, all sorts
9 of intervention that has long-term, far-reaching
10 effects to children, and that is particularly the
11 issue of the Missouri law.

12 And in this instance, the State of
13 Illinois has said we come down on the side of this
14 should happen and we -- we believe in that,
15 therefore, we're going to enact a statute that
16 doesn't allow you to get at the information.

17 And when you look at this, Illinois has
18 now enacted laws that go far outside the state of
19 Illinois and now says we're going to dictate to the
20 rest of the United States, to all other states, that
21 you will abide by what we believe is right and what
22 we believe is right is that gender-affirming care to
23 children should happen and you're not entitled to
24 get any information to find out about it.

1 So I think, under the instance of this,
2 the Illinois law has a lot of problems, the first
3 and foremost of which is dealing with the Full Faith
4 and Credit Clause of the United States Constitution
5 because they're now dictating to other states what's
6 going to happen and what you can and can't do. And
7 it's specifically done for the purpose that I think
8 is even more burdensome, and that is because of the
9 thought process which rolls us into the First
10 Amendment. I agree with counsel that the First
11 Amendment is an issue here, but it actually cuts our
12 way. Because, in this instance, WPATH and the State
13 of Illinois has said, well, you're not entitled to
14 this information. And one of the foundational
15 principles of this entire country is the free flow
16 of information, particularly on issues that are
17 germane to public opinion, public policy, political
18 discussion. And, in this instance, we're dealing
19 with statutes, medical treatment, but it is
20 absolutely a generalized discussion in the United
21 States and currently a topic of issue among everyone
22 about whether or not this is appropriate as it
23 relates to children.

24 And, in this instance, WPATH has set

1 out guidelines. They say, look, we've done
2 scientific studies. Here's our studies, we've laid
3 them out, and this is how you should do it. It's a
4 good thing.

5 But the problem is is they say, but you
6 don't get to get the information behind these
7 studies to hear the dissenting voices, as we know
8 there are those.

9 In fact, in their motion to quash, they
10 even cite that -- that WPATH's concern that some of
11 this information could get out and it could be
12 misinterpreted. That's what America is about.

13 We've put all the information out on
14 the table. If you want to claim that a scientific
15 theory or medical theory is true and accurate and
16 correct and the proper way and the standard of
17 treatment, then it must be placed out there to be
18 tested, to be reviewed, to be sought about.

19 And, in this instance, as much as WPATH
20 has said that the State of Missouri is in some way
21 phobic to people with these issues, nothing could be
22 further from the truth.

23 In fact, this statute becoming
24 unconstitutional will help these individuals.

1 Because what will help is that all of the
2 information, the medical science, the studies will
3 all come out, and then the people of this state who
4 are considering these sorts of treatments and
5 therapies --

6 THE COURT: Of the State of Illinois?

7 ATTORNEY DREW: Of the State of Illinois
8 and every other state will get an opportunity to
9 read and review these scientific studies and to test
10 them, and then others can do their own studies.

11 That's what this is about.

12 You don't get to say, and what's
13 happened here in the state of Illinois is very
14 simply, the Shield Law has said we agree with one
15 scientific theory, one medical course of treatment,
16 and you're not allowed to get any information about
17 it.

18 It's precisely what the State of
19 Illinois and what states are not allowed to do. You
20 simply can't do that. It violates the First
21 Amendment. And it clearly does. And there's a
22 number of cases I've cited that I think that's
23 precisely what it is. Because they've picked and
24 looked at what is your reasoning --

1 THE COURT: "They"?

2 ATTORNEY DREW: "They" being the State of
3 Illinois in this statute.

4 THE COURT: I'm sorry.

5 ATTORNEY DREW: And the State of Illinois
6 in this instance has said, your theory or thought
7 process is you disagree with gender-affirming care
8 for children so, therefore, because that's your
9 thought process and you disagree with us, we're
10 going to prohibit your ability to get information.

11 It isn't in any general way of doing
12 it. It's very specific. Very -- very closely
13 tailored to deal with just two issues. One,
14 reproductive rights. And, one, issues involving
15 gender dysphoria and other gender-affirming care.
16 And when I say "one," I mean all of them in the
17 instance of this so.

18 And in doing that, I think that's the
19 reason why we need to even go past just the fact
20 that I don't think our requests fall under the
21 Shield Act, but I think that if the Court deems that
22 it is, because, technically, we are seeking that and
23 the statute is written so broadly that there's even
24 one word in it that says: Or in any way seeking or

1 helping in care.

2 I don't know what that means. I would
3 lay money that the legislature doesn't know what it
4 means when they wrote it. They just made it as
5 broad as humanly possible.

6 So, conceivably, what we have here is,
7 if you believe it does fall into that, then I think
8 now all of these constitutional issues really play
9 into it and really come full bear because, in this
10 instance, the State's enacting a legislation where
11 they have adopted a policy of hostility towards
12 other states. And it's precisely the type of things
13 that I don't think is allowed, not only in Illinois,
14 but not allowed in the United States, particularly
15 when it involves state versus state.

16 And so for all those reasons,
17 Your Honor, and all the reasons I've laid out in the
18 reply or response to their motion to quash that
19 their motion to quash should be denied but that in
20 addition to that the underlying statute would need
21 to be found unconstitutional for all those reasons.

22 THE COURT: So it's going to be reviewed a
23 couple times, isn't it?

24 ATTORNEY DREW: Well, it will go

1 straight -- if the Court agrees with me, it would
2 probably go straight to the Illinois Supreme Court,
3 and we can get to the crux of the issue very
4 quickly.

5 ATTORNEY DAILEY: Your Honor, may I point
6 out --

7 THE COURT: Yes, you may.

8 ATTORNEY DAILEY: I just want to point out
9 two quick things. Notably absent from what counsel
10 shared here is any discussion of this State's
11 Rule 17.

12 That rule -- it's argument that we're
13 making in our motion, and that is to say, Rule 17
14 says: If you're issuing a foreign subpoena in
15 Illinois for lawful health care activity, one of two
16 exemptions must apply.

17 They concede in the subpoena that they
18 are seeking lawful health care activity.

19 They do not identify an exemption.
20 That reason alone is dispositive on this issue in
21 front of you. They don't comply with Rule 17.

22 Counsel muddies the water and seems to
23 suggest that somehow what's in front of you is the
24 constitutionality of the Shield Law.

1 That's not what's in front of you.

2 It's the subpoena that's in front of
3 you.

4 Rule 17 alone is proof positive that
5 the subpoena should be quashed.

6 On the Shield Law, it's quite clear
7 that when the legislature and the governor enacted
8 this Shield Law they had Missouri AG in mind, this
9 kind of civil and criminal discovery, from outside,
10 out-of-the-state enforcers who are seeking
11 information having to do with gender-affirming care.

12 That law, which is new, and I think
13 this would be sort of a matter of first impression
14 if you ruled or if the Supreme Court rules --

15 THE COURT: I think whichever way I rule.

16 ATTORNEY DAILEY: Right.

17 And so -- so we think, and we've laid
18 out in our motion all of the reasons, the intent
19 behind the -- the intent behind the law, all the
20 reasons why the Shield Law bars precisely the kind
21 of subpoena in front of you.

22 Counsel attempts to also argue that
23 somehow you're bound by courts in other places.

24 They cite the Middle District of

1 Alabama and courts in North Carolina.

2 And counsel is correct that they've
3 been litigating and states have been litigating
4 these documents and these requests in others
5 jurisdictions. But as you know, Your Honor, we have
6 different laws here, it's a different court. None
7 of those states have a Shield Law. Different
8 counsel. So to suggest that somehow that a
9 smattering of these documents have been produced in
10 other jurisdictions and somehow that's binding on
11 you is just -- couldn't be further from the truth.

12 What's in front of you is a subpoena
13 for documents.

14 We have a shield law, we have Rule 17,
15 and we have all of the arguments that we're making
16 in the motion.

17 I think their failure to address many
18 of those arguments in detail, particularly, the
19 legal arguments, and then to provide legal support
20 for their own arguments in their response is
21 sufficient basis to grant the motion to quash.

22 THE COURT: Okay. Thank you.

23 Have I, in this case, denied a subpoena
24 from Illinois to Missouri's Attorney General or

1 governor?

2 ATTORNEY DREW: The subpoena was issued by
3 the clerk.

4 THE COURT: It was?

5 ATTORNEY DREW: Yes, it was.

6 THE COURT: Okay. All right. I remember
7 it now.

8 ATTORNEY DREW: Yes, sir.

9 THE COURT: Returned it to you twice,
10 I think.

11 ATTORNEY DREW: Yes, you did, Your Honor.
12 You are exactly right.

13 THE COURT: That's because, when it's filed
14 under this case number, I don't get any background
15 information. Everything that is kind of
16 miscellaneous goes into that number. So it's a
17 huge, huge file.

18 ATTORNEY DREW: I saw that.

19 THE COURT: So, sorry, I didn't know the
20 basis. I guess you requested or your office did.

21 ATTORNEY DREW: I did.

22 THE COURT: Okay. Sorry.

23 I returned it twice. Trust me.

24 ATTORNEY DAILEY: I see.

1 ATTORNEY DREW: You did.

2 THE COURT: I should have called you.

3 I intended to, and I didn't. I'm sorry.

4 ATTORNEY DREW: Oh, no, Judge.

5 THE COURT: Especially the second time.

6 ATTORNEY DREW: Not at all.

7 THE COURT: Since we have the statute in
8 Illinois, constitutional or not, I think I have to
9 at least follow that one for now.

10 I'm inclined to deny their motion for a
11 lot of other reasons, but I'm going to grant their
12 motion.

13 ATTORNEY DREW: Okay.

14 THE COURT: Okay? So sorry.

15 ATTORNEY DREW: Okay. Thank you,
16 Your Honor.

17 THE COURT: You prepare the order.

18 ATTORNEY DAILEY: Pardon me?

19 THE COURT: You prepare the order.

20 ATTORNEY DAILEY: Yes, sir.

21 ATTORNEY DREW: Thank you, Your Honor.

22 THE COURT: If you want to write it, you
23 can. If you want to do it at your office, you can.

24 ATTORNEY DAILEY: Will do.

1 THE COURT: If you want to do it in your
2 office, pass it around to them first.

3 ATTORNEY DAILEY: Yes.

4 THE COURT: Okay. Thank you.

5 ATTORNEY DAILEY: Thank you, Your Honor.

6 THE COURT: Take care.

7 ATTORNEY DREW: Thank you.

8 THE COURT: Good luck.

9 (Which were all the proceedings had in
10 said matter on said date.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF K A N E)

4 CERTIFICATE

5 I, Jennifer Campbell, an Official Court
6 Reporter for the Circuit Court of Kane County, 16th
7 Judicial Circuit of Illinois, transcribed the
8 electronic recording of the proceeding in the
9 above-entitled cause to the best of my ability and
10 based on the quality of the recording, I hereby
11 certify the foregoing to be a true and accurate
12 transcript of said electronic recording.

13 *Jennifer Campbell*

14 _____
15 Jennifer Campbell, CSR, RPR
16 Official Court Reporter
17 16th Judicial Circuit of Illinois
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